IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA BRUNSWICK DIVISION

MARION ALSTON,

Petitioner.

v. : CIVIL ACTION NO.: CV210-077

MARTY ALLEN, Warden,

Respondent.

ORDER

After an independent and *de novo* review of the record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Petitioner Marion Alston ("Alston") asserts: (1) he never hired new counsel; (2) ground eleven of his claim is not that "trial counsel made uninformed tactical decisions and failed to argue self-defense and justification," but rather that "trial counsel made uninformed trial decisions and unreasonably abandoned Petitioners sole defenses of self defense and justification," (Doc. No. 16, p. 3); (3) that grounds four and 9-14 of his ineffective assistance of appellate counsel should not be dismissed because Judge Wilkes knowingly "perpetrated a fraud upon the court" by allowing Alton's trial counsel to withdraw without filing an appeal (id. at p. 16); and that Judge Wilkes deceived Alston into believing that he had been provided a valid Motion for a New Trial and direct appeal of his criminal conviction. (Id. at pp. 5-6).

With respect to the first two issues that Alston raises in his Objections, the fact that new counsel was appointed, rather than hired is immaterial to Alton's petition. Also,

the slight syntax distinction between ground eleven as stated in the Report and how Alston wished it to be phrased in his Objections makes no difference in the outcome of Alston offers no evidence that Judge Wilkes deceived Alston or his petition. "perpetrated a fraud upon the court." Alston admits in his petition that his Motion for New Trial was granted for the sentencing portion, and he was allowed to appeal his conviction and sentence. (Doc. No. 1, pp. 4-7).

Alston's Objections are OVERRULLED. The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Claim eleven of Alston's ineffective trial counsel ground, claims four and 9-14 of Alston's ineffective appellate counsel grounds, and ground three of Alston's petition are DISMISSED. Alston's remaining claims are **DENIED**.

The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this $\sqrt[l]{}$ day of __

LISA GODBEY WOOD. CHIEF JUDGE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF GEORGIA